

***Remarks***

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-7, 9, 11, 13-19 and 28-41 are pending in the application, with claims 1, 13, 32, 34, 36 and 38 being the independent claims. Of these claims, claims 6-7 and 13-19 have been withdrawn from consideration as being directed to a non-elected invention. By the foregoing amendment, claim 41 is sought to be amended. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

***Rejections under 35 U.S.C. § 112***

The Examiner rejected claim 41 under 35 U.S.C. §112, second paragraph, as being indefinite. Applicant has amended claim 41 to accommodate this rejection. Accordingly, reconsideration and withdrawal of the rejection is respectfully solicited.

***Rejections under 35 U.S.C. § 103***

In the Office Action, the Examiner has rejected claims 1-5, 9 and 30-38 under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 4,320,699 to Binks in view of U.S. Patent No. 3,549,451 to Kugler. In addition, the Examiner has rejected Claims 11, 28, 29, 39, 40 and 41 under 35 U.S.C. § 103 as being unpatentable over Binks in view of Kugler and further in view of a product brochure from M&Q Plastic Products, Inc. Finally, the Examiner has rejected Claims 1-5, 9, 11 and 28-41 under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 2,542,413 to Ibsch, Jr., or U.S. Patent No. 4,828,134 to Ferlanti in view of Kugler, and the M&Q Plastic Products brochure. Applicant respectfully traverses these rejections and request that they be reconsidered and withdrawn.

As explained in the Reply filed on August 30, 2002, the claimed invention is a pan liner system that includes a pan and a drop-in polymeric pan liner. The pan liner has a contour fit and is made from a material that allows it to withstand cooking temperatures. This makes the pan liner inexpensive to manufacture, simple to use, and disposable.

In the previous Reply, Applicant also explained how the present invention differs from the conventional drop-in polymeric pan liner having a flat bottom (i.e., non-contour fit). Specifically, a shortcoming of the conventional liner is that the bag shape creates pockets in the bottom corners. These pockets trap food and result in wasted food. This problem is exacerbated in large shallow cooking pans. In the case of a large, shallow cooking pan, the bag corners are quite large and can trap several servings of food. The present invention provides an elegant solution to this problem without requiring complex, manufactured structures.

As previously explained, the art cited by the Examiner does not address this problem solved by the invention. The layered or laminated cooking vessels disclosed by Ibsch and Ferlanti are irrelevant to the problems encountered by a bag-shaped pan liner. The same analysis applies to Binks. Binks discloses a Teflon cooking sheet that may be used to line a pan. However, Binks is not bag-shaped, and does not disclose or suggest a solution to the problems encountered with a bag-shaped pan liner.

In the Office Action, the Examiner has essentially asserted that it would be obvious to combine the teachings of one or more of these references with the plastic bag manufacturing techniques taught by Kugler. Applicant respectfully disagrees with the Examiner's position. There is no suggestion in Kugler or any of the other cited references for making such a combination. In fact, none of these references even suggests the problem solved by the present invention. Absent identification of such a problem, why would a person skilled in the art look to Kugler for a solution to a problem that has not been identified? The answer is that a person skilled in the art would not. It is only through hindsight reconstruction, using Applicant's own disclosure as a blueprint, that the Examiner is able to pick and choose features from the prior art in an attempt to produce the claimed invention. Such hindsight reconstruction is inappropriate.

#### **Declaration of Michael Handley**

In support of Applicant's position, the previous Reply included a Declaration of Michael Handley Under 37 C.F.R. § 1.132 rebutting the Examiner's alleged prima facie case of obviousness. The Examiner, however, held the Handley Declaration to be unpersuasive because, among other things, Mr. Handley is an employee of M & Q Plastic Products (the

assignee of the present application). The Examiner concludes that the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

**Declaration of Dr. Melvin L. Druin**

In support of Applicant's position that the present invention (as recited in independent Claims 1, 32, 34, 36, and 38) would not have been obvious to a person of ordinary skill in the art in view of the cited references, Applicant submits herewith a Declaration of Dr. Melvin L. Druin. As noted in the declaration, Dr. Druin is not an employee of M & Q Plastic Products and has no financial interest in M & Q Plastic Products or in the patent application.

As set forth in the Declaration, Dr. Druin is an expert in the field. Dr. Druin provides his opinion that, contrary to the Examiner's position, the claimed invention would not have been obvious to a person skilled in the art in view of the art cited by the Examiner.

In the Office Action, the Examiner states that the Handley Declaration is not persuasive because "There is no detailed discussion of even one 103 rejection where the motivational statement is considered and the motivation is rebutted with reasoned argument." Office Action at p. 6. However, it is respectfully submitted that the Examiner has not shown any motivation to combine for Applicant to rebut. Rather, the Examiner has simply described the teachings of each cited reference and stated that it would have been obvious to make the asserted combinations. For example, when describing the combination of Binks and Kugler, the Examiner states at p. 3 of the Office Action that "It would have been obvious to modify the shape of the Binks liner to have the flat bottom edge and two straight tapered edges in order to provide a contoured liner which is quick and easy to

manufacture from a length of tubular sheet material while maintaining uniformity in shape.”

The Examiner has failed to show any teaching in either reference that makes such a suggestion.

While the Examiner has provided no evidence to support the assertion that the invention is obvious in view of the combined teachings, Applicant has provide evidence to the contrary. Dr. Melvin Druin, an expert in the field, has provided a Declaration stating that, in his opinion, “it would not have been obvious to a person of ordinary skill in the art to combine the teachings of these documents to reproduce the claimed invention.” See Druin Declaration at ¶11.

Furthermore, in support of his opinion that the claimed invention would not have been obvious to a person skilled in the art, Dr. Druin addresses each cited reference and points out how the teachings of the reference differ from the invention. Dr. Druin's comments inherently address the motivation issue. For example, in ¶16, Dr. Druin states that:

Kugler discloses a satchel bottom bag, not a pan liner. The bag of Kugler is for packaging and is therefore shaped to hold a product. Kugler does not disclose a liner that is contoured to fit a container, as in the present invention. Furthermore, the Kugler bag is not suitable for cook, serve and store applications targeted by the present invention, and does not address the problem of food entrapment.

The Examiner has provided no evidence to the contrary. Certainly, the Examiner has provided no showing of motivation that requires rebuttal.

Furthermore, in ¶¶21- 22, Dr. Druin points out that polyethylene pan liners have been used in the food service industry for more than about 30 years and suffer from the same food entrapment problem as the high temperature pan liners. However, Dr. Druin states that he

has never seen any pan liner prior to the present invention that had a contour fit. Neither has the Examiner cited any prior art teaching of the same. Certainly if the invention were obvious, 30 years would be enough time for somebody to have done it.

In sum, Applicant respectfully submits that the Examiner has not made a prima facie showing of unpatentability, because the Examiner has not shown any reason why a person skilled in the art would have been motivated to make the asserted combination of references. Furthermore, Dr. Druin's Declaration provide evidence to the contrary; evidence that a person skilled in the art would not have been motivated to make the asserted combination. Finally, assuming for purposes of argument that the Examiner has made a prima facie case of unpatentability, Dr. Druin's Declaration clearly rebuts the prima facie case by showing how each cited reference differs from the invention and how no motivation to combine is present. For these reasons, it is respectfully requested that the Examiner reconsider and withdraw the rejection of the claims under 35 U.S.C. §103.

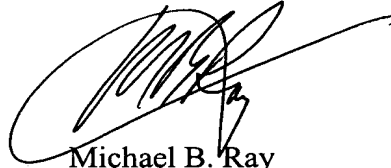
### ***Conclusion***

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully  
requested.

Respectfully submitted,

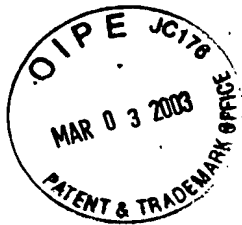
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Blucher  
Appl. No. 09/491,639

**Version with markings to show changes made**

***In the Claims:***

Claim 41 has been amended as follows:

41. (Amended) The pan liner system of claim [39] 38, wherein said [nylon resin] polymeric material comprises polyester.

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